Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1703

Gladys Beatty,
Petitioner

– against –

Lycoming County Children's Services, *et al.*,
Respondent

PETITION FOR CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

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INDEX

	Page
Opinion Below----------	2
Jurisdiction ----------	2
Statutes & Regulations Involved-----	2
Questions Presented----------	3
Statement of the Case----------	4
Argument----------	10
I. Certiorari Should be Granted	
1. The decision of the Pennsylvania Supreme Court conflicts in principle with the decision of the United States Court of Appeals and with other State Supreme Court decisions.----------	10
2. The decision of the Pennsylvania Supreme Court will have a significant adverse impact on Constitutionally protected family interests----------	14
Conclusion----------	20
Appendix A--(Opinion & Order of Court of Common Pleas of Lycoming County, Orphans' Court Division)----------	1a
Appendix B--(Statutes Involved)-----	11a

Table of Authorities

Cases: Page

Alsager v. District Court of Polk County, Iowa, 406 F. Supp. 10 (S.D. Iowa 1975)----------10,12, 13,19

Alsager v. District Court of Polk County, Iowa, 545 F. 2d 1137 (1976)----------10,12, 13,19

Berrien v. Greene County Department of Public Welfare, 217 S. E. 2d 54 (Virginia 1975)----------13

Brandl, In re, 459 Pa. 636, 331 A.2d 172 (1975)---------- 17

Grayned v. City of Rockford, 404 U.S. 104 (1972)---------- 17

Meyer v. Nebraska, 262 U.S. 90 (1923)----------3,10

Moore v. City of East Cleveland, U.S. 52 L. Ed. 2d 531 (1977)----------10,19

Quillon v. Walcott, 54 L. Ed. 2d 511 (1978)----------13

R.I. Adoption of, Pa. 361 A.2d 296 (1976)----------17,

Roe v. Wade, 410 U.S. 113 (1973)----10,19

Smith v. Organization of Foster Families, U.S. 53 L. Ed. 2d 14 (1977)---------- 10,13, 19

Page

Stanley v. Illinois, 405 U.S. 645 (1972)----------3,10

Walter B., In re, 4 F.L.R. 2380 (Utah 1978)----------13

William L., In re; Appeal of Marjorie L.; In re Judith B., Appeal of Gladys B., Pa. 383 A.2d 1228 (1978)----------2,11,12, 13,14,15,16

Wisconsin v. Yoder, 406 U.S. 205 (1972)---------- 10

Provisions of the United States Constitution:

First Amendment----------2,3,

Ninth Amendment----------2,3,

Fourteenth Amendment----------2,3,15, 18

Statutes:

1 Pa. C.S.A. §311---------- 2,3,4,9

Legislative Material:

House of Representatives, Sub-Committee on Select Education, Foster Care: Problems and Issues, No. 94th Congress, Second Session, Sept. 8, 1976--14

Senate Committee on Labor and Public Welfare, 94th Congress, First Session, Foster Care and Adoptions: Some Key Policy Issues----------14

Miscellaneous: Page

Goldstein, Freud & Solnit, Beyond the Best Interests of the Child, Free Press (N.Y. 1973)---------- 12

Fanshel and Shinn, Children in Foster Care, A Longitudinal Investigation, Columbia University Press (N.Y. 1978)---------- 12

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The Petitioner, Gladys Beatty, respectfully prays that a Writ of Certiorari Issue to review the judgment and opinion of the Supreme Court of Pennsylvania, Eastern District, entered on January 31, 1978, which affirmed, with one Justice dissenting, an order of the Pennsylvania Court of Common Pleas, Orphans' Court Division, entered on September 15, 1976.

OPINION BELOW

The Opinion of the Supreme Court of Pennsylvania, Eastern District, and one concurring and dissenting Opinion and one dissenting Opinion are reported at 383 A.2d 1228, sub. nom., In Re William L.. These Opinions are also set out in the Appendix to the Petition for a Writ of Certiorari in Marjorie Lehman v. Lycoming Children's Services, which is simultaneously being docketed with this Court. These Opinions have not been printed in an Appendix attached hereto. The findings, discussion and Order of the Orphans' Court are unreported and are set out in Appendix A, infra.

JURISDICTION

The judgment of the Pennsylvania Supreme Court was entered on January 31, 1978. On April 24, 1978 Mr. Justice Brennan entered an Order extending the time to file this Petition for Certiorari to and including May 31, 1978. The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. §1257(3).

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statute and Constitutional provisions involved are set forth in Appendix B to this Petition:

1. 1 Pa. C.S.A. §311 of the Adoption Act of 1970.

2. First, Ninth and Fourteenth (§1) Amendments to the United States Constitution.

QUESTIONS PRESENTED

This Court has recognized that family relationships are entitled to fundamental Constitutional protection pursuant to the First, Ninth and Fourteenth Amendments to the United States Constitution. See, for example, Meyer v. Nebraska, 262 U.S. 90 (1923), Eisenstadt v. Baird, 405 U.S. 438 (1972). The Court has also recognized in Stanley v. Illinois, 405 U.S. 645 (1972), that the state has the "right" and "duty" to protect minor children. Id. at 649. Therefore, one question presented for decision is whether a compelling state interest must be proved to justify termination of parental rights. The parental rights of your Petitioner were terminated as to her daughter, born July 1965, who has been in the foster care of Respondent, Children's Services, since October 2, 1974. As a result, she has no rights with respect to her, including that of visitation. Termination of parental rights is a prerequisite to adoption within the Adoption Act, 1 Pa. C.S.A. §101 et seq., should someone later seek to adopt her.

A second question is whether the facts in this case constitute the requisite compelling State interest: the mother was found incapable of providing the care and control Judith needs because of the mother's "low education, limited mental ability, and more importantly, a lack of emotional control and self-discipline on the part of the mother." The parent-child relationship has been characterized by mutual affection and regular parental visitation while in

foster care.

A third question presented is whether 1 Pa. C.S.A. §311(2) is impermissibly overbroad, on its face and as applied, encompassing family situations where there is no compelling State interest.

A fourth question presented is whether 1 Pa. C.S.A. §311(2) is impermissibly vague on its face and as applied.

Under 1 Pa. C.S.A. §311(2) there are two categories of parents: one consists of incapacitated parents, either physically, mentally or both; another consists of healthy parents. The parental rights of the first class can be terminated. Those of the second cannot be terminated without an additional showing of parental misconduct. Therefore, the final question presented is whether the statutory classification is necessary under the Equal Protection Clause of the Fourteenth Amendment to promote a compelling State interest.

STATEMENT OF THE CASE

Gladys Beatty, your Petitioner, is the natural mother of Judith Beatty, born July 19, 1965. After an evidentiary hearing, the Lycoming County Court of Common Pleas, Orphans' Court Division, terminated all of her parental rights with respect to her daughter in an Order of September 15, 1976, upon Petition of Lycoming County Children's Services (Children's Services), an agency of county government of the Commonwealth of

Pennsylvania. A timely appeal to the Pennsylvania Supreme Court resulted in affirmance in an opinion and order of January 31, 1978.

In January 1974 the following minor children lived with Gladys Beatty, their mother: Dorothy, then age 17; Boyd, then age 15; David, then age 12; and Judith, then age 9. In March 1974, Dorothy was moved from the home by the Juvenile Court of Lycoming County as a result of her involvement in a burglary. Boyd Beatty and David Beatty were also removed from the home in October 1974 for delinquent behavior: theft of bicycles, the offense having been committed by Boyd, David and Judith. Judith was removed from her mother's custody in October 1974 and has resided in foster care since then. Children's Services made improved housekeeping by the mother a condition of the child's return to her home. Members of the staff of Children's Services visited the Beatty home between May 1966 and December 1968. The agency became involved again in August 1971 and visited the home periodically thereafter.[1]

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[1] It is interesting to note that, although the Agency had had contact with the family for a number of years, removal was not effected until Judith was involved in delinquent acts. This is true in spite of the fact that the lower court had reviewed a petition of Children's Services alleging inadequate housekeeping in May 1974. The Pennsylvania Supreme Court noted the following concerning the lower court's reasons

(continued on next page)

During the time Judith was in foster care, Children's Services permitted visitation for one hour each month. At the hearing the Agency admitted that Gladys Beatty never missed an opportunity to visit her daughter. At the visits there was physical contact between mother and daughter as well as considerable expression of emotion. The Court found that the mother in this case ". . .very deeply loves her children. . ."

Gladys Beatty is illiterate. She completed the second grade in the Georgia school system.

On occasion, prior to removal of the child from the home, there was garbage on the floor of the Beatty home and dogs in the home. Sometimes, dogs were observed eating dirty diapers. A Williamsport public health officer visited the Beatty home at several different locations over a ten year period in response to complaints from neighbors. On these occasions he found garbage around and inside the house, infestations of roaches, dirty clothes and dirty dishes. He found food scattered about the kitchen floor and on the stove. The refrigerator was dirty and usually contained food that was moldy. On at least two occasions

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for removal from the home: "The juvenile proceedings were not incorporated in the record, but the record does indicate that custody was taken from appellant because previous court-ordered efforts by Children's Services to improve the physical conditions in the home had been unsuccessful and because Judith participated with her older brothers in the commission of a juvenile offense.

he found cockroaches in the refrigerator. On at least one occasion during the summer he observed maggots in food left lying in the kitchen. A Juvenile Probation officer visited the home in February 1974 and he found clutter. The weather was below freezing, but there was no heat in the home and the children were inadequately clothed. Some windows were gone and had been replaced by cardboard. The burners on a gas stove were being used for heating. Laundry was stacked near the burners.

There were times prior to removal when housekeeping in the Beatty home was at least adequate.

After the removal of Judith, on some occasions when a Children's Services worker visited, the home was clean and uncluttered. On other occasions, it was cluttered or dirty or both.

There is no evidence that Judith Beatty suffered physical or mental harm from the poor housekeeping which, at times, existed in the home.

In terminating parental rights between Gladys Beatty and her daughter Judith based on incapacity of the mother to care for her, the County Court said:

> The cause [of the incapacity] has not been a lack of love. On the contrary, it is clear that the mother very deeply loves her children and that affection is reciprocated at least by the other Beatty

> children mentioned in the proceeding (Dorothy, Boyd and David). There is no reason to believe that the feeling of love is not reciprocated on the part of Judith herself. The incapacity on the part of the mother has not involved any physical abuse of the child and there is no reason to believe that Judith or any of her siblings were anytime suffering from malnutrition. While clothing may have been dirty, it apparently was adequate. (App. A, pp. 7A,8A).

With respect to Dorothy, the lower court said:

> Since being placed in foster homes, she has only been in the home of her mother for visits and occasionally for a weekend. She maintains a very real love and affection for her mother and for her siblings. (App. A. p. 4A).

However, it is clear from the Opinion of the lower court, that the deep relationship between mother and daughter was not considered relevant in a proceeding to terminate parental rights. The Pennsylvania Supreme Court adopted this view. In so doing, the Court held that evidence herein establishes a sufficient State interest to terminate

parental rights under Due Process requirements imposed by the First, Ninth and Fourteenth Amendments to the United States Constitution. It held that the statutory provision is not vague facially or in its application. It also held that the provision is not overbroad, that it does not encompass fact situations which are Constitutionally imperissible.

Gladys Beatty argued by Brief before the Pennsylvania Supreme Court that the Court should adopt a narrow interpretation of 1 Pa. C.S.A. §311(2) which would avoid Constitutional infringement. Under an interpretation suggested to the Court, the parental rights of Gladys Beatty to her daughter Judith could not have been terminated. Appellant further argued that in the absence of a narrowing interpretation, the statute Constitutionally infringes upon the right of parents and children to associate, a fundamental Constitutional liberty. Beatty argued interference with such a liberty interest by a state could only be for reasons constituting a compelling State interest.

Gladys Beatty argued that the statute was vague facially and in its application. She argued that the provision is overbroad and encompasses fact situations which are Constitutionally impermissible. Appellant cited the First, Ninth and Fourteenth Amendments to the United States Constitution in support of her position.

ARGUMENT

REASONS FOR GRANTING THE WRIT

1. The decision of the Pennsylvania Supreme Court conflicts in principle with the decision of a United States Court of Appeals and with other State Supreme Court decisions.

The decision of the Pennsylvania Supreme Court conflicts in principle with the decision of the United States Court of Appeals, 8th Circuit. Alsager v. District Court of Polk County, Iowa, 545 F. 2d 1137 (1976). Affirming the decision of the district court, the 8th Circuit held that the state of Iowa must demonstrate a compelling state interest before terminating parental rights. See Alsager v. District Court of Polk County, Iowa, 406 F. Supp. 10 (S.D. Iowa, 1975). The district court required a showing that the consequences of allowing the parent-child relationship to continue were more severe than the consequences of the termination itself. Alsager supra. at 23.

After finding that the termination affected a fundamental right[2], the district court cited Roe v. Wade, 410 U.S.

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[2] See, Meyer v. Nebraska, 262 U.S. 390 (1923); Stanley v. Illinois, 405 U.S. 645 (1972); Wisconsin v. Yoder, 406 U.S. 205 (1972); Moore v. City of East Cleveland, U.S. , 52 L. Ed. 2d 531 (1977); Smith v. Organization of Foster Families, U.S. , 53 L. Ed. 2d 14 (1977).

113 (1973), for the proposition that:

> "Where certain 'fundamental rights' are involved, the Court has held that regulation limiting those rights may only be justified by a 'compelling state interest' and that legislative enactments must be narrowly drawn to express only the legitimate state interest at stake.

The Pennsylvania Supreme Court citing the doctrine of parens patriae determined that the state's interest in caring for children "authorizes interference with parental autonomy and decision making"; that the circumstances of such interference are sensitive policy choices for the legislature to prescribe; and, that the legislature's mandate for termination of parents suffering irremedial incapacity "must be accorded great deference." In re: William L., at 1236.[3]

Furthermore, the Court decided that, on the facts of the case, and in accord

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[3] At the time this Petition was printed a copy of the printed Opinion of the Pennsylvania Supreme Court attached to the Petition in Marjorie Lehman v. Lycoming County Children's Services before this Court, was unavailable to your Petitioner. It was printed in another city and time did not permit reference to pages therein. Therefore, for the convenience and assistance of the Court, citations to the Atlantic Reporter, Second Series are included herein.

with the current literature on the subject[4], a mother's parental rights should be terminated because of the child's essential need for "a stable home and strong continuing parental ties." In re: William L. at 1241.

It is clear, therefore, that the Pennsylvania Supreme Court did not consider the sufficiency of the evidence in light of the compelling state interest standard required for termination in Alsager, supra., but rather, that the Pennsylvania Court viewed the state's child protection interest as a matter of

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[4] In re: William L., at 1241; see Goldstein, Freud and Solnit, Beyond the Best Interests of the Child, the Free Press (N.Y. 1973). This book argues that a continuing relationship between an out-of-custody, natural parent and his/her child is valueless and possibly harmful to the child. A more recent publication, Children in Foster Care: A Longitudinal Investigation, by David Fanshel and Eugene B. Shinn, Columbia University Press (N.Y. 1978), presents empirical information which clearly disputes this position, and, reaches the following conclusion: "The termination of parental rights reflects one of the most extreme forms of state power. It should be used most gingerly and judiciously. People should not be penalized because they are poor, because they are mentally ill, or because they are afflicted with drug addiction or alcoholism. They should not be penalized because it is less expensive for society to terminate their rights and allow others, endowed with better economic means, to replace them as the parents of their children."

legislative definition and judicial construction within the broader parens patriae powers of the state. In other words, termination was in the best interest of the child.

This "best interest" approach has been rejected by at least two state Supreme Courts. Berrien v. Greene County Department of Public Welfare, 217 S.E. 2d 54 (Virginia, 1975); In re: Walter B., 4 FLR 2380 (Utah, 1978). Although appropriate for temporary emergency custody proceedings, this best interest standard was deemed inadequate in Alsager, supra. where a termination, with its countervailing parental interest, raised the due process standard.

Within the past year, this Court has twice cautioned that the family unit may not be destroyed "without some showing of unfitness and for the sole reason that to do so was in the children's best interest." Smith v. Offer, U.S. , 53 L. Ed. 2d 14 (1977); Quilloin v. Walcott, 54 L. Ed. 2d 511 (1978). But, because there is no Supreme Court case directly on point, the potential for conflicting interpretation of involuntary termination cases from jurisdiction to jurisdiction is high. Issues of due process vagueness and overbreadth have also been raised in both Alsager, supra. and In re: William L., supra. and, although the 8th Circuit declined to resolve the questions, such issues foreshadow litigation.

The substantial numbers of children

in foster care, almost one half million,[5] are evidence of the potential for increased litigation regarding the constitutionality of termination proceedings and statutes. It is imperative that the effect of Constitutional protections upon the respective interests and evidentiary burdens of the parent and the state be defined by this Court.

2. The decision of the Pennsylvania Supreme Court will have a significant adverse impact on Constitutionally protected family interests.

A. The Pennsylvania Supreme Court has determined that a parent who is incapacitated and can no longer care for her child has no right to a continuing relationship with her child because, in light of the legislature's findings and the current sociological literature, this relationship is not in the child's best interests. In re: William L. at 1246.

Although evidence was presented by Children's Services showing unsanitary conditions and lack of parental super-

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[5]House of Representatives, Subcommittee on Select Education, Foster Care: Problems and Issues, 94th Congress, Second Session, Sept. 8, 1976, 533; Statement of HEW Representative John C. Young, id. at 541, Note 1; See, Senate Committee on Labor & Public Welfare, 94th Congress, First Session, Foster Care & Adoptions: Some Key Policy Issues.

vision in the home, thereby demonstrating Petitioner's incapacity, it is clear that the custody of the child had been with foster parents since October 1974. In re: William L. at 1245. No serious threat to the child's health and safety could therefore exist. In fact, the record shows that no serious harm was suffered by Judith B. while in Petitioner's custody. In re: William L. at 1246.

By determining that the family had already been severed in 1974, and that no potential existed for re-uniting the family, the majority declared that no Constitutionally protectable family interest remained. This renders the court's recitation of parental rights a nullity and ignores a real love and affection, noted by the trial court, between Petitioner and Judith B.

Based instead, therefore, on a finding of irremedial incapacity of the parent and the belief that "Judith's best interests would be served by terminating appellant's parental rights so that Judith might be adopted into a responsible family" the Pennsylvania Supreme Court's decision devalued any continuing relationship of parent and child, abrogating a fundamental liberty interest under the Due Process Clause of the Fourteen Amendment. In re: William L. at 1246. As noted by Justice Manderino in his dissent:

> The termination of parental rights, however, means that the child is dead so far

> as that parent is concerned. I cannot, as does the majority, make a value judgment that a child will grow up to be a better adult if that child is cut off from its natural parents who are not able, without fault, to care for the child. In re: William L. at 1252.

Furthermore, the unconstitutional overbreadth of the decision will sweep far beyond the facts of this case to any parent who is incapacitated and, therefore, fails to provide essential parental care.

As explained in the dissent of Justice Manderino:

> Suppose a parent is incapacitated, without fault, as the result of an automobile accident, or a heart attack, or an injury received during a war? Under the majority's holding, if such a parent cannot take care of his/her children, the state may terminate parental rights. To state the issue is to answer it. The state can Constitutionally have no such right. In re: William L. at 1250.

Complicating the overbreadth problem are the recent trend of cases in the Pennsylvania Supreme Court which are in-

consistent with the present case of Petitioner. Adoption of R.I., 361 A.2d 296 (Pa. 1976); In Re: Geiger, 331 A.2d 172 (Pa. 1975); In Re: Brandl, 339 A.2d 759 (Pa. 1975).[6] Ironically, the present case seems to reverse a trend established in those cases which accorded termination only in cases of clear necessity. The instant decision does not further define this line of cases, but instead, it contradicts the case law and impermissibly broadens the statute. Grayned v. City of Rockford, 404 U.S. 104 (1972).

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[6]In Brandl the parent had been criminally prosecuted for child neglect and had been committed to a state mental hospital for ten years. Yet, the Court vacated a termination order because of testimony that with a great deal of assistance she would be able to manage in the future with the children.

Similarly, in Geiger the Court again reversed a termination order against a mentally retarded and emotionally disturbed parent who provided a "sub-marginal" physical and emotional atmosphere "because the record does not establish that the physical or mental well-being of the children suffered because of such conditions." The Court noted that the physical conditions of the home were adequate and that the children were loved and adequately fed and clothed. The Court expressly rejected predictions of future emotional harm.

Although the Court affirmed the termination order in the Adoption of R.I., there the

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The vagueness and overbreadth of this statute will work a discrmination against the poor and the disabled, those most in need of state protection. Because Children's Services agencies, which are primarily involved with the poor and the disabled, initiate termination proceedings, those persons who seek agency help for their family are likely to find that their weaknesses are later interpreted by a court as a demonstration of legal incapacity, especially where a child is placed in foster care.

In addition, the lack of meaningful statutory standards or a judicial narrowing construction will allow those agencies and the judiciary to apply subjective standards in termination proceedings. This will seriously impinge upon a substantial liberty interest guaranteed by the Due Process Clause of the Fourteenth Amendment.

B. Improper Analysis of Substantive Due Process.

Although the Pennsylvania Supreme Court cited the significant Constitutional interests of the parent, the failure of the Supreme Court of Pennsylvania to consider the sufficiency of the evidence within a compelling state interest analy-

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child suffered from malnutrition and numerous bleeding body sores under parents care. The Court emphasized that termination may only be resorted to upon such a showing of clear necessity.

sis obscures the importance of the Constitutionally protected liberty interests of the parent. The appropriateness of the compelling state interest rationale is demonstrated by long standing Constitutional authority. Roe v. Wade, supra.; See Alsager, supra. Liberty and privacy interests are not defined by state law, but rather, inhere in federal constitutional rights. Moore v. City of East Cleveland, 97 Sup. Ct. 1932 (1977); see Smith v. Organization of Foster Families, 97 Sup. Ct. 2094 (1977).

In light of the fundamental and Constitutionally protected nature of the parent-child relationship, state statutes and proceedings which result in the termination of parental rights must meet Constitutional standards. Incorrect or inappropriate state court construction of federal rights will dilute federal protection of these basic liberty interests.

CONCLUSION

The Petition for Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY

ORPHANS' COURT DIVISION

IN RE: :

JUDITH DENISE BEATTY :

A MINOR : No. 2993

OPINION & ORDER

This action is brought by the Lycoming County Children's Services agency to terminate the parental rights of Gladys Beatty with respect to her daughter, Judith Denise Beatty. Hearings were held on the petition on three days between July 2nd and August 13th, 1976. The following factual determinations are made:

Judith Denise Beatty, age eleven, was born on July 19, 1965 and is the youngest child of Gladys Beatty. The father left the home many years ago and his whereabouts are unknown. Judith was placed in the custody of Children's Services in November, 1974. We will initially review the conditions within the family as they existed in 1974.

In 1974, there were four juvenile children living with Gladys Beatty. Dorothy - then age 17; Boyd - age 15; David - age 12 and Judy - age 9. The family at that time had been long known to public health officials and to the child welfare agency. Frequent complaints had been received through the

years of extreme unsanitary conditions in the home at the various locations where the Beattys lived. The agency had worked with the case since 1966. Mrs. Wurster, the caseworker from August 1971 until August 1975, testified that there was always garbage on the floor which you couldn't avoid stepping on; that there were dogs eating off dirty pampers; and there was an occasion while she was there that a child was eating off a plate and one of the many dogs in the house "got there first" and ate the food.

George Dooris, Williamsport Public Health Officer of twenty years standing was acquainted with the Beattys for over ten years, having answered complaints while they lived on Lycoming Street, Second Street, William Street, East Canal Street, another address on Second Street, Sixth Street and the Peter Herdic Housing Project. The complaints were ordinarily by neighbors and related to insect and rodent infestations and garbage accumulations. He said the conditions were invariably bad with garbage inside and outside the house in accumulations; ordinarily the place was grossly infested with roaches. There were dirty clothes scattered about the home. In the summer there would be maggots in the food in the house and particles of food would almost invariably be scattered upon the floor about the house. On the last two occasions he even found cockroaches in the refrigerator and he never saw any more cockroaches than he did at their home. When the Beattys were required to leave the Housing Authority Project in 1974, he stated that the insect infestations were so bad that they had to evacuate the whole row of houses and it

took four months to clean it up.

Caroline Louise Thomas, who was then employed by the Williamsport Area School District went to the home in connection with David. She affirmed the constant pattern of dirt in the house, animal feces scattered in different rooms and the impossibility of walking without stepping on particles of food.

In February 1974, a probation officer visited the Beattys who were then living on Canal Street. There was extreme clutter. The weather was below freezing but windows were gone; there was no heat and the children were inadequately clothes. The burners in the gas stove were blazing at capacity in an apparent attempt to warm the home. Laundry was stacked near the open burners, constituting an alarming fire hazard.

Several of the witnesses testified that there were times, especially when the authorities were exerting pressure, when Mrs. Beatty would make an effort to clean up the home, but invariably the conditions returned to "deplorable." Often, there was a bad stench about the home.

The three children immediately older than Judy all came into trouble with the law and the following is a brief synopsis of their case histories: Dorothy, known as Dodi is now age 19. In March of 1974 when she was 17, she was involved in a burglary of a home in which $5,000.00 in cash was taken. She was removed from the home by the juvenile court judge at that time and placed in a foster home. Since that time, and until her 19th birthday, she lived in two different foster homes for approximately one year each. There has been awakened in her a desire to for-

ward her education and for self-improvement; she has completed high school and is now enrolled in the East Stroudsburg College. Since being placed in foster homes, she has only been in the home of her mother for visits and occasionally for a weekend. She maintains a very real love and affection for her mother and for her siblings. Boyd Beatty, who is now 17 years of age was before the Juvenile Court twice in 1973, once for burglary and larceny and again for a safe burglary. He was back before the Juvenile Court in October of 1974 for the theft of bicycles, the offense having been committed with his 13 year old brother, David and the then 9 year old Judy. Boyd was placed at the George, Jr. Republic, where he remained until November of 1975. While at the Institution, he had an excellent record, made a great deal of self-improvement, educationally and socially. Less than three months after his return to his mother's home, he was back in Juvenile Court on February 19, 1976 for a theft offense. He was again adjudicated delinquent and was placed in the Waterdale Camp Program which is a residential work experience program operated by Lycoming County for other than hardened delinquents. Once again, outside the home he had an excellent record, was a good worker. He completed that program on August 12th of this year. He was described by his caseworker as having "reached a level of maturity where he can make it on his own," and he was permitted on August 13th at age 17 to return to the mother's home.

David is now age 14, nearly 15. Mrs. Thomas, of the school district testified as to her involvement with David in the

school setting when he was age 12. He was a serious behavior and truancy problem. She made three home visits at three different addresses. He was often teased at school because of grooming, dirt and lack of discipline. Both she and the probation caseworker testified that David represents a serious behavioral problem. When he was before the Court in October of 1974 for the bicycle thefts referred to above, he was placed for sixty days at the Diagnostic Center at Loysville Youth Development Center, and upon completion of that sixty days, was placed at Loysville for its full program. When he completed the Loysville regular program, he was placed in a satellite foster home and has since been placed at a private group home known as Sherwood Hall. There are no plans for his return to the family.

Judy, herself, was nine years of age when she was taken from the mother's custody in October of 1974. According to the testimony of Mrs. Wurster, Judy was never hostile. She had been involved at that tender age in the bicyle theft with her two older brothers and she had started to miss school. Judy has been placed in a stable foster home. If the parental rights of Gladys Beatty are terminated, she is considered to be very "adoptable."

Gladys Beatty is illiterate, having completed only the second grade.

When Judy was taken from the mother's home in 1974, the caseworker reviewed a plan with Mrs. Beatty for the return of the child. That plan included raising housekeeping capabilities to a minimally acceptable level; obtaining appropriate counseling and cooperation

with the Lycoming County Children's Services agency in its efforts to determine whether sufficient improvements had been made. Since that time, there have been periods of great improvement when there were no unsanitary conditions in the home, and when Mrs. Beatty seemed motivated to improve her parental skills. However, these have invariably been followed by regression. In February of 1976, when juvenile probation caseworkers had occasion to be in the home, they observed conditions which caused them to ask the Children's Services agency to make an immediate visit. (At that time, the interest of the agency related to the children of an older Beatty daughter, Joan. Joan had several infant children, who together with Joan, were living with Mrs. Beatty.) Stacks of garbage bags were found on the back porch. Garbage and food was found throughout the house. On the floors were dirty pampers. A number of dogs and cats were in the home and the fecal material from those animals was scattered on the floors and had obviously not been cleaned up. There was a hole in one floor upstairs; clothing and other materials were scattered. A foul odor permeated the home. Photographs of the condition were taken. A petition for custody was brought with respect to Joan's children and a settlement was reached whereby Joan obtained and is maintaining a dwelling separate from her mother. Earlier. in December of 1975, while the caseworker was making a visit to the home, she observed that the door was not operable; no one answered the door although it was clear there were people within. A T.V. repairman arrived at the home and entered the house through an

open window as he could not enter through the door.

On a number of occasions in the past, Mrs. Beatty has been uncooperative with the agency, refusing to answer the door when workers have called at the home. At times she has voiced a feeling of helplessness as to the conditions of the home, blaming the conditions on "the boys" or responding to a suggestion that the number of cats and dogs be reduced by protesting that they belong to the kids.

It is our conclusion that there has been a repeated and continued incapacity on the part of Gladys Beatty, which caused Judith to be without essential parental care, control or subsistence necessary for her physical and mental well-being. The essential parental care, control or subsistence which has been missing has included the deplorable and unsanitary and dangerous home conditions. The lack of parental control is illustrated by the pattern of delinquency among the younger Beatty children, the pattern into which Judith herself was falling at the age of nine when she was taken from the home. The cause of the incapacity would appear to be a combination of low education, limited mental ability, and more importantly, a lack of emotional control and self-discipline on the part of the mother. The cause has not been a lack of love. On the contrary, it is clear that the mother very deeply loves her children and that affection is reciprocated at least by the other Beatty children mentioned in the proceeding (Dorothy, Boyd and David). There is no reason to believe that the feeling of love is not reciprocated on the part of Judith herself. The incapacity on the

part of the mother has not involved any physical abuse of the child and there is no reason to believe that Judith or any of her siblings were any time suffering from malnutrition. While clothing may have been dirty, it apparently was adequate.

The clear weight of the evidence presented satisfies us that the mother's incapacity cannot or will not be remedied by her.

We have considered the possibility that with David and Dorothy no longer living at home, the pressure on the mother may have been reduced to a point where she can provide minimal care. However, the gross incident of February, 1976 would tend to negate that hope.

We have also considered carefully the possibility that the maturing siblings might provide supplemental assistance to the mother so that minimal care might be provided. However, Joan has three infant children, is living outside the home and is working so there is no indication that she would have the ability or in fact the motivation to provide maternal care to Judith. Dorothy would appear to be blossoming into a stable, bright and compassionate young lady; however, she has just begun her college education, is not living at home and while she clearly has affection for and interest in her sister, she would simply not be at home to supplement her mother's parental care of Judith. Boyd, at age 17, is working and has not been returned to the home in the hope that he has developed sufficient maturity to "hold his own"; however, he cannot be considered as a source of supplemental supervision for Judith.

Section 311 of the Adoption Code pro-

vides that "The rights of a parent in regard to a child may be terminated. . .on the ground that:. . . (2) the repeated and continued incapacity,. . .neglect, or refusal of the parent has caused the child to be without essential parental care, control,. . .necessary for his physical or mental well-being and the conditions and causes of the incapacity. . .neglect or refusal cannot or will not be remedied by the parent. . .". We conclude that the parental rights of Gladys Beatty as to Judith should be terminated.

By The Court,

Thomas C. Raup, Judge

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY
ORPHANS' COURT DIVISION

IN RE: :

JUDITH DENISE BEATTY :

A MINOR : NO. 2993

ORDER

AND NOW, September 15th, 1976, the Petition of the Lycoming County Children's Services agency to Involuntarily Terminate the parental rights of Gladys Beatty with respect to Judith Beatty is granted.

BY THE COURT,

Thomas C. Raup, Judge

cc: L.C.C.S. Agency
Charles F. Greevy, III, Esq.
Jon C. Lyons, Esq.
Court Administrator

APPENDIX B

STATUTE AND CONSTITUTIONAL
PROVISIONS INVOLVED

The Adoption Act of Pennsylvania, 1970 July 24, P.L. 620, No. 208, art. III, §311; 1 Pa. C.S.A. §311.

§311. Grounds for Involuntary Termination.

The rights of a parent in regard to a child may be terminated after a petition filed pursuant to section 312, and a hearing held pursuant to section 313, on the ground that:

(1) The parent by conduct continuing for a period of at least six months either has evidenced a settled purpose of relinquishing parental claim to a child, or has refused or failed to perform parental duties; or

(2) The repeated and continued incapacity, abuse, neglect, or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect, or refusal cannot or will not be remedied by the parent; or

(3) The parent is the presumptive but not the natural father of the child.

UNITED STATES CONSTITUTION

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENMENT IX

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Supreme Court, U. S.
FILED
JUL 26 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1703

Gladys Beatty,

Petitioner

– against –

Lycoming County Children's Services, *et al.*,

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES..... ii

INTRODUCTION..... 1

COUNTERSTATEMENT OF THE CASE..... 2

ARGUMENT..... 4

REASONS FOR DENYING THE WRIT..... 4

1. THE DECISION OF THE PENNSYLVANIA SUPREME COURT IS CONSISTENT WITH DECISIONS OF OTHER APPELLATE COURT AND THE UNITED STATES SUPREME COURT..... 4

2. THE DECISION OF THE PENNSYLVANIA SUPREME COURT IS CONSISTENT WITH UNITED STATES SUPREME COURT DECISIONS IN FINDING CONSTITUTIONALLY PROTECTED FAMILY INTERESTS... 8

CONCLUSION..... 12

TABLE OF AUTHORITIES

Cases: Pages

Alsager vs. District Court of Polk County, Iowa, 406 F. Supp. 10, aff'd 545 F.2d 1137 (1976)...4,5,9

Croisette, Adoption of, 364 A.2d 263, 468 Pa. 417 (1976).....10

Geiger, In re, 331 A.2d 172, 459 Pa. 636 (1975).....7,10

Grayned vs. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).....9

Kapcsos, Matter of, 360 A.2d 174, 468 Pa. 50 (1976).....6

Lutheran Children and Family Service of Eastern Pennsylvania (Appeal of Diane B.), In re:, 321 A.2d 618, 456 Pa. 429 (1974).....10

McAhren, In re: Adoption of, 331 A.2d 419, 460 Pa. 63 (1975).....10

McCray Adoption Case, 331 A.2d 652, 460 Pa. 210 (1975).....10

Orwick, In re: Adoption of, 347 A.2d 677, 464 Pa. 549 (1975).10

Quillon vs. Walcott, 54 L. Ed. 2d 511 (1978).....7

R. I., In re: Adoption of, 361 A.2d 294, 468 Pa. 287 (1976).....6

Sims vs. State Dept. of Public Welfare, 438 F. Supp. 1179 (1977).....8

Smith Adoption, 194 A.2d 919, 412 Pa. 501 (1963).....10

Smith vs. Offer, 53 L. Ed. 2d 14 (1977).....7

Stanley vs. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972).....8

William L., In re: Judith Denise B., In Re, 383 A.2d 1228 (Pa. 1978).....1,5,6, 7,8,9

Young, Adoption of, 364 A.2d 1307, 469 Pa. 14 (1976).....6

Statutes:

1 Pa. C.S.A. §311(2).....9

Colorado Rev. Statutes, Ann. §19-11-10.....6

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 77-1703

GLADYS BEATTY,
PETITIONER

vs.

LYCOMING COUNTY CHILDREN'S SERVICES, et al.
RESPONDENT.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

The Respondent, Lycoming County Children's Services, respectfully prays that the Writ of Certiorari to the Supreme Court of Pennsylvania, sought by Petitioner, Gladys Beatty, be denied. The text of the decision of the Pennsylvania Supreme Court is reported as follows: In Re: William L., 383 A.2d 1228 (Pa. 1978), and is set forth at length in Petitioner, Marjorie Lehman's Petition, Docket Number 77-1704, pages 1a to 67a. The text of the Orphans' Court Decision in this particular matter, is contained in Petitioner's Petition, pages 1A to 9A.

COUNTERSTATEMENT OF THE CASE

On September 15, 1976, the Lycoming County Orphans' Court terminated the parental rights of the Petitioner, Gladys Beatty, for her daughter, Judith Beatty, who was then eleven (11) years of age. Judith Beatty had been removed from the home of her natural mother, Gladys Beatty in October, 1974, following an adjudication by the Lycoming County Juvenile Court, and has resided in a foster home since that time.

Both the Orphans' Court and the Pennsylvania Supreme Court directly reiterated that after approximately ten (10) years, Gladys Beatty's capacity to maintain a minimally adequate home for her four (4) children had led to the disruption of the family, and had not been remedied despite continuing assistance from caseworkers, nutrition aides, public health officials, and school counselors. The findings and conclusion that Mrs. Beatty's incapacity in regards to her youngest child, Judith Beatty, would not or could not be remedied was recited at length by the Orphans' Court and Supreme Court decisions.

Testimony at the Orphans' Court hearing indicated that the Children's Service Agency had been working with Gladys Beatty and her family since 1966, and that they had long been known to public health officials, with frequent public complaints being received concerning the extreme unsanitary conditions

in the various homes and aprtments where the family had lived. All of the witnesses, without exception, related conditions of garbage accumulation, filth, and even gross insect and rodent infestations. George Dooris, Williamsport Public Health Officer of twenty (20) years. standing, stated he even found cockroaches in the refrigerator and that he had never seen any more cockroaches than he did at the Beatty home. (Orphans' Court Transcript, page 50). Further Mr. Dooris stated:

> "A. Any building can be declared unfit for human habitation which is so unsanitary, unsafe that it could be a hazard to the occupants or to the public health. So, most times, Mrs. Beatty's house would come under that classification. It would be unsanitary, and could be declared unfit for human habitation." (Orphans' Court transcript at page 41).

Judge Thomas Raup, Orphans' Court Judge, reviewed the testimony that proved that the three (3) children immediately older than Judith all appeared in Juvenile Court in Lycoming County and were all removed from the home prior to or at the same time as Judith was placed in a foster home. Judge Raup notes that all three (3) older children progressed steadily and are on their way to becoming useful citizens; without exception, any progress was made out of the natural mother's home, and

regression evidenced when they returned home, even for a very short period of time. (Orphans' Court decision, see Petitioner's Petition, Appendix A).

ARGUMENT

REASONS FOR DENYING THE WRIT

1. THE DECISION OF THE PENNSYLVANIA SUPREME COURT IS CONSISTENT WITH DECISIONS OF OTHER APPELLATE COURTS AND THE UNITED STATES SUPREME COURT.

Petitioner buttresses her attack on the decision by the Pennsylvania Supreme Court in this particular matter, through reference to the case of Alsager vs. District Court of Polk County, Iowa, 406 F. Supp. 10, aff'd at 545 F.2d. 1137 (1976). Petitioner before the Orphans' Court and again before the Pennsylvania Supreme Court urged this particular decision, which differs both in fact, principle, and application to our present matter. In Alsager, a termination petition was filed in mid-1969, approximately one (1) month after five of the six Alsager children had been placed into the legal custody of the County of Polk, Iowa. Additionally, the evidence in the Iowa State Court was found insufficient by the Federal Court when it revealed merely that the Alsagers at some times permitted their children to leave the house in cold weather without winter clothing, allowed them to play in traffic, to annoy neighbors, to eat mush for supper, to live in a house containing

dirty dishes and laundry, and to sometimes arrive late at school. (Id., 406 F. Supp. at 22.)

In the Beatty case, we have a definite finding by the Orphans' Court that Judith Beatty was following into delinquent behavior as her older brothers and sister had, that she had been raised in deplorable and unsanitary and dangerous home conditions, that the family had received social service agency involvement for over seven (7) years, and the mother in the two (2) years since placement of Judith had made no consistent and stable adjustment to her living situation to justify the return of her daughter. The Orphans' Court concluded after a lengthy review of the facts that there had been a repeated and continuing incapacity on the part of Gladys Beatty which caused Judith to be without essential parental care, control or subsistance necessary for her physical and mental well-being. The Court stated that the "cause of the incapacity would appear to be a combination of low education, limited mental ability, and more importantly, a lack of emotional control and self-discipline on the part of the mother." (Petitioner's Appendix A, page 7A). The Pennsylvania Supreme Court also discussed at length the facts which constituted competent evidence necessary to sustain the termination of Gladys Beatty's parental rights. (See In Re William L., 383 A.2d at 1243-45; Lehman Appendix at 40a to 47a.) These facts when measured against previous decisions of the Pennsylvania Supreme Court, are wholly con-

sistent, and in line with judicial interpretations in other jurisdictions.

Petitioner next argues that the Pennsylvania Supreme Court is advancing a "best interest" approach in upholding the Orphans' Court termination of the parental rights. A reading of the Orphans' Court decision (Petitioner's Appendix A) reveals no reliance on a best interest foundation until precise and definite grounds for parental rights termination had been shown under the Pennsylvania statute. Also, the Pennsylvania Supreme Court does not rely upon the best interest considerations in its review of the Orphans' Court transcript and affirmance of the termination. Indeed, the Pennsylvania Supreme Court has stated often that, prior to the best interest of the children being considered, there must be grounds for involuntary termination proven by a preponderance of the evidence. (See In Re: Adoption of R. I., 361 A.2d 294, 468 Pa. 287 (1976); Adoption of Young, 364 A.2d 1307, 469 Pa. 14 (1976); Matter of Kapcsos, 360 A.2d 174, 468 Pa. 50 (1976)). Some jurisdictions are presently adopting a "best interest" consideration in their adoption and termination legislation. (See e.g. Colorado's "Parent-Child Legal Relationship Termination Act of 1977", Colo. Rev. Statutes, Ann., Section 19-11-101 et seq.) This change is through legislative action as it should be, and is respected by the Pennsylvania Court in our matter. (In Re William L., 383 A.2d at 1236; Lehman, Appendix A, 18a.)

Respondent emphasizes that rather than being in conflict with decisions from other jurisdictions, the Pennsylvania Supreme Court has set forth in detail in its decision the legislative basis and court interpretation appropriate in the Pennsylvania termination decisions. Additionally, there is no legitimate potential for conflicting interpretation of involuntary termination cases when this Court's decisions in the Smith vs. Offer, 53 L. Ed. 2d. 14 (1977) and Quillon vs. Walcott, 54 L. Ed. 2d. 511 (1978), cases are examined. The "unfitness" necessary is clearly enunciated in the Beatty facts. This particular decision of the Pennsylvania Supreme Court under attack is consistent with previous Pennsylvania termination cases, and in line with the demanding degree of proof necessary. In Re: Geiger, 331 A.2d 172, 459 Pa. 636 (1975). The "compelling state interest" recognized herein is the "state's responsibility to protect its weaker members" and the Pennsylvania court evaluates this foundation through appropriate United States Supreme Court decisions. (In Re: William L., 383 A.2d at 1236; Lehman, Appendix, 16a. to 18a.)

The inital "Questions Presented" and first "Argument" of Petitioner Beatty are clearly rebutted by review of the Pennsylvania Supreme Court's decision, In Re: William L., Supra. There is no basis to Petitioner's averment that no compelling state interest was shown or supported in terminating parental rights by the Pennsylvania courts. Moreover, the facts clearly show a repeated and continued

incapacity of Gladys Beatty's stretching well over five (5) years, that caused Judith Beatty to be without the parental care and control necessary for her physical and mental well-being. These conditions and causes had not improved consistently or even stabilized in almost ten (10) years, and would not in the future. A Writ of Certiorari to the Pennsylvania courts should not be granted on these bases.

2. THE DECISION OF THE PENNSYLVANIA SUPREME COURT IS CONSISTENT WITH UNITED STATES SUPREME COURT DECISIONS DEFINING CONSTITUTIONALLY PROTECTED FAMILY INTERESTS.

It is abundantly clear that there is a fundamental right emanating from the Constitution, which protects the integrity of the family unit from unwarranted intrusions by the state. This was most succinctly stated in Stanley vs. Illinois, 405 U.S. 645, at 651, 92 S. Ct. 1208, at 1213, 31 L. Ed. 2d. 551 (1972). (See also, cases cited in Sims vs. State Department of Public Welfare, 438 F. Supp. 1179, at 1190 (1977)). Indeed, Justice Samuel J. Roberts of the Pennsylvania Supreme Court, writing the majority opinion, discussed at length the substantive due process rights guaranteed under the Pennsylvania Statute in light of many Supreme Court decisions. See In Re: William L., 383 A.2d 1228, at 1234-35; Lehman Appendix, 12a to 15a.

Indeed, a reading of the decision in this matter, In re William L., Supra., will convince this Court that, contrary to Petitioner's arguments, the Pennsylvania Supreme Court decision dealt firmly with constitutionally protected family interests, and properly applied substantive due process in upholding the Orphans' Court termination of the parental rights of Gladys Beatty.

In Grayned vs. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972), by analogy, the Court suggests that standards that may be seen as vague in a statute may be safe from a definitive unconstitutional upholding if the needed specificity has been supplied by other decisions of a State Supreme Court. This thinking is quoted with favor in Alsager, 406 F. Supp. at 19. This is what the Pennsylvania Supreme Court has done, as specifically set forth in its decision, and even discussing the same cases that troubled Petitioner herein. (Compare Petitioner Beatty's Petition at Page 17, with In re William L., 383 A.2d at 1239, 1240, 1242-43 (footnote 25), 1246; and Lehman Appendix, 27a to 29a, 37a (footnote 25), 38a., 48a, 49a.)

Petitioner's allegations that §311(2) of the Pennsylvania Adoption Act is unconstitutionally vague are without merit. This legislation fairly puts a parent on notice that parental rights can be terminated where there is an abandonment or refusal to provide, or incapability of providing, essential parental care. This language of the Pennsylvania legis-

lature, when coupled with the array of Pennsylvania cases which speak to elements of what parental duties and responsibilities consist of, give very definite guidelines for interpretation of the law when applied to particular factual circumstances. (See, e.g., In Re: Lutheran Children and Family Service of Eastern Pennsylvania (Appeal of Diane B.), 321 A.2d 618, 456 Pa. 429 (1974); Smith Adoption, 194 A.2d 919, 412 Pa. 501 (1963); In Re: Adoption of Orwick, 347 A.2d 677, 464 Pa. 549 (1975); In Re: Adoption of McAhren, 331 A.2d 419, 460 Pa. 63 (1975); In Re Geiger, Supra.; Adoption of Croisette, 363 A.2d 263, 468 Pa. 417 (1976); McCray Adoption Case, 331 A.2d 652, 460 Pa. 210 (1975).

It would be impossible to set forth in the statute all of the circumstances which might arise in an infinite variety of factual circumstances, which could constitute a lack of essential parental care. The legislative approach, which is not at all uncommon in Anglo-American jurisprudence is to use a general standard which has a commonly accepted meaning, and which is susceptible of application on a case-by-case basis in the common law tradition by the Courts. A child and her well-being is not a chattel which a natural parent can possess or dicker with, but must be recognized as a vibrant and maturing individual with very basic biological, emotional and psychological needs. These basic human needs are initially presumed and intended to be provided by a natural parent in a loving and stable home

environment; however, this is too often not the reality of life. Therefore, governments have instituted and labored over statutes and standards by which conduct is to be measured, whether by a private individual, or as in this instance a county social agency. Therein, are persons trained to aid others in recognizing and striving to meet these minimal standards of parental actions, duties, and responsibilities. These persons are guided by legislative mandates, their life long experiences, and their decisions and actions overseen in particular instances by the Courts. Herein, Gladys Beatty had been known to social agencies in Lycoming County for a period in excess of ten (10) years, and the Orphans' Court in the termination matter recognized that there had been no consistent and stable home environment maintained by her during this period of time for her children. All public service agencies recognize the possible abuse of discretion, and judgmental decisions which may take place; however, there has not been, and remains no allegation of that type of arbitrary and subjective viewpoint in this proceeding.

The burden of proof assumed by the Respondent in an involuntary termination proceeding, particularly under the Pennsylvania statutes, is a very demanding one. In Re Geiger, Supra. It is a decision and assertion that is initially made by a Petitioner considering an involuntary termination, whether a person or agency, then developed and argued by a lawyer, evaluated and applied by a judge, and then reviewed by an appellate court.

Herein, these demanding and time-consuming steps have each been made, and the decision of the Pennsylvania Supreme Court is on firm constitutional foundation, which when examined by the scrutiny of this Court in its consideration of Gladys Beatty's Writ for Certiorari need not be further reviewed.

CONCLUSION

IN SUMMARY, it is submitted that sufficient due process procedures and standards have been and can be applied in the proper analysis of grounds of the involuntary termination in this matter, leading to an eventual adoption, to overcome any argument of the constitutionality of this section of the Pennsylvania Adoption Statute.

WHEREFORE, Respondent prays that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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see

78

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